



## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 917

[SATS No. KY-264-FOR; Docket ID: OSM-2022-0008; S1D1S SS08011000 SX064A000

234S180110; S2D2S SS08011000 SX064A000 23XS501520

#### Kentucky Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are announcing receipt of a proposed amendment to the Kentucky regulatory program (hereinafter, the Kentucky program), under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Kentucky proposes to revise their regulations regarding the qualifications of members of the Reclamation Guaranty Fund Commission. This document gives the times and locations that the Kentucky program and this proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

**DATES:** We will accept written comments on this amendment until 4 p.m., Eastern Daylight Time (EDT), [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If requested, we may hold a public hearing or meeting on the amendment on [INSERT DATE 25 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. We will accept requests to speak at a hearing until 4 p.m., EDT on [INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments, identified by SATS No. KY-264-FOR, by any of the following methods:

- *Mail/Hand Delivery:* Mr. Michael Castle, Field Office Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, KY 40503
- *Fax:* (859) 260-8410
- *Federal eRulemaking Portal:* The amendment has been assigned Docket ID OSM-2022-0008. If you would like to submit comments, go to <https://www.regulations.gov>. Follow the instructions for submitting comments.

*Instructions:* All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Comment Procedures” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* For access to the docket to review copies of the Kentucky program, this amendment, a listing of any scheduled public hearings or meetings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSMRE’s Lexington Field Office or the full text of the program amendment is available for you to read at <https://www.regulations.gov>.

Mr. Michael Castle, Field Office Director

Lexington Field Office

Office of Surface Mining Reclamation and Enforcement

2675 Regency Road

Lexington, KY 40503

Telephone: (859) 260-3900

Email: [mcastle@osmre.gov](mailto:mcastle@osmre.gov)

In addition, you may review a copy of the amendment during regular business hours at the following location:

Mr. Gordon Slone, Commissioner

Department for Natural Resources

Kentucky Energy and Environment Cabinet

3000 Sower Boulevard

Frankfort, KY 40601

Telephone: (502) 564-6940

Email: [GordonR.Slone@ky.gov](mailto:GordonR.Slone@ky.gov)

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Castle, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, KY 40503.

Telephone: (859) 260-3900; email: [mcastle@osmre.gov](mailto:mcastle@osmre.gov)

**SUPPLEMENTARY INFORMATION:**

- I. Background on the Kentucky Program
- II. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. Statutory and Executive Order Reviews

**I. Background on the Kentucky Program**

Subject to OSMRE's oversight, section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its approved State program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. *See* 30 U.S.C. 1253(a)(1) and (7).

On the basis of these criteria, the Secretary of the Interior conditionally approved the Kentucky program effective May 18, 1982. You can find background information on the

Kentucky program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Kentucky program in the May 18, 1982, **Federal Register** (47 FR 21434). You can also find later actions concerning the Kentucky program and program amendments at 30 CFR 917.11, 917.12, 917.13, 917.15, 917.16, and 917.17.

## **II. Description of the Proposed Amendment**

By letter dated April 18, 2022, (Administrative Record No. KY-2008), Kentucky sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). This submission proposes to revise the qualifications necessary for members to be appointed to the seven-person Reclamation Guaranty Fund Commission. Currently, the governor appoints three members to the commission that are representatives of the coal industry. Representatives are selected based on the amount of coal produced annually by the permittees they represent. Three tiers are created based on the amount of production with one member being selected from each tier. The proposed revisions would allow the governor to appoint a member from a lower tier when no permittee that participates in the fund meets the production level of an upper tier. This submission also removes, and proposes minor revisions to, requirements that are no longer relevant to the operation of the Commission. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES** or at [www.regulations.gov](http://www.regulations.gov).

The proposed amendment would make the following changes to KRS 350.506:

- A. Deleting the date “July 1, 2013” in *section 1*.
- B. The word “industry” is replaced in *1(a)* with “permittees that participate in the fund” and adds the language “tiered to represent the size of the operator measured in tons of coal sold”.
- C. The numbering has been updated in *section 1(a)(3)*.
- D. *Section 1(a)(3)(b)*, which read as follows “If no permittee which participates in the fund has mined and sold more the five million (5,000,000) tons of coal in the twelve (12) months preceding appointment, the member shall be selected from permittees which meet the

criteria for appointment set out in subparagraph 2. of this paragraph”, is being deleted.

*E.* The following language is being added section 1(a) “If no permittee that participates in the fund meets the qualifications stated in subparagraph 2 or in subparagraph 3, of this paragraph, then a qualified permittee shall be selected in a lower tier.”

*F.* Section 2(a) is being deleted, and subsequent paragraphs are renumbered accordingly.

*G.* The following language in section 5, “commission shall meet no less than once a month with the first meeting to be held on or before July 1, 2013, during the first year. Commencing with the second year, the” is being deleted and replaced with, “The commission shall meet no less than once every three (3) months. Four (4) members of the commission shall constitute a quorum at any meeting”.

### **III. Public Comment Procedures**

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If approved, the amendment will become part of the State program.

#### *Electronic or Written Comments*

If you submit written or electronic comments on the proposed rule during the 30-day comment period, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

### *Public Availability of Comments*

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

### *Public Hearing*

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., EDT on **[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

### *Public Meeting*

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the

locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

#### **IV. Statutory and Executive Order Reviews**

*Executive Order 12866 - Regulatory Planning and Review and Executive Order 13563—*

*Improving Regulation and Regulatory Review*

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. Pursuant to OMB guidance dated October 12, 1993, the approval of State program amendments is exempted from OMB review under Executive Order 12866. Executive Order 13563, which reaffirms and supplements Executive Order 12866, retains this exemption.

*Other Laws and Executive Orders Affecting Rulemaking*

When a State submits a program amendment to OSMRE for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and Executive orders governing the rulemaking process and include them in the final rule.

#### **List of Subjects in 30 CFR part 917**

Intergovernmental relations, Surface mining, Underground mining.

**Thomas D. Shope,**

*Regional Director,*

*North Atlantic - Appalachian Region.*